IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 557 OF 1994.

Pandit Arjun Nagoji, age 54 years, occupation service, resident of 48, Bombay-Pune Road, Bopodi, Pune-411003. .. Petitioner (Ori.Defdt.)

Versus

1. Ashok Prataprao Satralkar, age 47 years, Occupation business,

2. Vijaykumar Prataprao Satralkar, age 49 years, both residents of 48, Bombay Pune Road, Bopodi, Pune 411 003. .. Respondents (Ori.Pltffs.)

Mr. Prafulla B. Shah for the petitioner.

None for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 4TH AUGUST, 2005

ORAL JUDGMENT. :

1. Heard. Petitioner is a tenant. Respondents are landlords. The predecessor in title of the present respondents-landlords created tenancy in respect of an open plot of land admeasuring 12' X 20' situate at 48, Bombay Pune Road, Mauje Bopodi, District Pune at the monthly rent of Rs.15/- + Re.1/- per month as water charges. By an Agreement dated 8th August, 1968, the

predecessor in title of the present respondents-landlords granted permission to the petitioner to construct a habitable structure on the suit plot. Sometime in the year 1973, the said old structure collapsed as it was in a dilapidated condition. The petitioner, therefore, based on the agreement of 1968, made the structure which is a basic factor for the present litigation. Practically after more than 5 years, notice to quit was served by the respondents-landlords on the ground of making permanent structure on the premises and also for demand of arrears of rent and ultimately, a Civil Suit No.248 of 1992 was filed before the Court of Small Causes at Pune (for short "Trial Court") for eviction. By judgment and order dated 23rd September, 1992, the ejectment suit was decreed in favour of the respondent only on the ground of permanent structure as contemplated under Section 13(1)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "The Bombay Rent Act"). The Appellate Court also, after considering the rival contentions, maintained the said order of the Trial Court and dismissed the Appeal. Therefore, the present Writ Petition by the petitioner-tenant.

2. Heard Mr. Prafulla B. Shah, learned counsel appearing for the petitioner. None appeared for the

respondent. The Appellate Court concluded the issue of permanent structure by observing thus:

> "I come to the conclusion that the defendant raised a construction without obtaining the written consent of the plaintiffs respondents and did not obtain the construction permission of the corporation. I, thereby, answer point no.1 in the affirmative."

3. The learned counsel appearing for the petitioner pointed out from the document at Page 48 i.e. agreement dated 8th August, 1968, whereby, the predecessor in title permitted the petitioner to use and occupy the plot area along with the habitable structure. Admittedly, as per the said agreement itself, the Plot admeasuring 12’ X 20’ is owned by the landlord. The structure on the said plot is owned by the petitioner-tenant. It is, therefore, very clear that when the agreement in question was entered into, there was no specific premises or structure involved. It was only a plot in question. It is not the case of the landlord that the premises in question when let out it was with the plot and some shed. The requirement of law is that if the tenant, without the permission of the landlord, makes any permanent structure on the premises which were let out at the relevant time, then there is a breach of the provisions of law and the landlord is

entitled to get the possession on the foundation of construction of permanent structure for making such permanent alteration. In the present case, in the facts and circumstances, I am of the view that there is no such case made out on the record. Considering the evidence as placed, as well as, the documents referred to and relied upon by the learned counsel for the petitioner, I am of the view that the landlord is not entitled to claim possession of the premises on this foundation of alleged permanent construction without permission. The permission has been granted to occupy the plot with habitable structure. Therefore, construction in question cannot be treated as unauthorised. There was no question of written permission or consent of the respondent now.

4. One more facet which goes in favour of the petitioner is that the construction in question was made sometime in the year 1973. The suit was filed on 9th March, 1978. The authorities, after issuing notice of so-called illegal and unauthorised construction, at later point of time, compounded the said unauthorized construction. Now the said construction is regularised by the authorities.

5. For the reasons referred above, in the facts

and circumstances of the case, I am inclined to interfere with the order passed by the Court below.

6. In the result, the judgment and decree passed by the Appellate Court dated 7th January, 1994, and the judgment and order passed by the Trial Court dated 23rd September, 1992, are quashed and set aside. The suit, as filed by the landlord is dismissed. The Writ Petition is allowed. Rule is made absolute in view of the above terms. No order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]